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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

11 || JUAN C. MEDINA,

Plaintiff,

13 || v.

14 SUPERIOR COURT OF CALIFORNIA,
15 COUNTY OF SANTA BARBARA, ET
AL..

Defendants.

Case No. 1:20-cv-00636-HBK (PC)

ORDER TO ASSIGN A DISTRICT JUDGE

FINDINGS AND RECOMMENDATIONS TO DISMISS ACTION FOR FAILURE TO PROSECUTE ACTION¹

FOURTEEN-DAY OBJECTION PERIOD

18 Plaintiff Juan C. Medina is a state prisoner proceeding pro se in this civil rights action.
19 For the reasons set forth below, the undersigned recommends the District Court dismiss this case
20 for Plaintiff's failure to prosecute this action.

BACKGROUND

22 Plaintiff Medina, a state prisoner, is proceeding pro se on his initial civil rights complaint
23 under 42 U.S.C. § 1983 alleging various claims under the Eighth and Fourteenth Amendments.
24 (Doc. No. 1, “Complaint”). On February 27, 2023, the undersigned screened Plaintiff’s
25 Complaint and found that it failed to state any cognizable claim. (Doc. No. 13). Plaintiff was
26 given three options to exercise within twenty-one (21) days from receipt of the February 27, 2023

²⁸ ¹ This matter was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302 (E.D. Cal. 2022).

1 Order: (1) file a First Amended Complaint (“FAC”); (2) file a notice that he intends to stand on
 2 his initial complaint subject to the undersigned recommending the district court dismiss for
 3 reasons stated in the February 27, 2023 Screening Order; or (3) file a notice to voluntarily dismiss
 4 this action, without prejudice, under Federal Rule of Civil Procedure 41(a)(1) because no
 5 defendant had yet been served. (*Id.* at 9). The Court expressly warned Plaintiff that if he “fails to
 6 timely respond to this Court Order, *i.e.*, fails to elect and notify the Court of any of the three
 7 options, the undersigned will instead recommend that the district court dismiss this case as a
 8 sanction for Plaintiff’s failure to comply with a court order and for failing to prosecute this action
 9 after its determination that the complaint failed to state a claim, which will count as strike under
 10 the PLRA.” (*Id.*). The twenty-one (21) day deadline has lapsed and Plaintiff has not elected any
 11 of the three options or otherwise moved for an extension of time.² (*See generally* docket).

12 APPLICABLE LAW AND ANALYSIS

13 A. Legal Standard

14 Federal Rule of Civil Procedure 41(b) permits the court to involuntarily dismiss an action
 15 when a litigant fails to prosecute an action or fails to comply with other Rules or with a court
 16 order. *See* Fed. R. Civ. P. 41(b); *see Applied Underwriters v. Lichtenegger*, 913 F.3d 884, 889
 17 (9th Cir. 2019) (citations omitted). Similarly, the Local Rules, corresponding with Federal Rule
 18 of Civil Procedure 11, provide, “[f]ailure of counsel or of a party to comply with … any order of
 19 the Court may be grounds for the imposition by the Court of any and all sanctions … within the
 20 inherent power of the Court.” E.D. Cal. L.R. 110. “District courts have inherent power to control
 21 their dockets” and, in exercising that power, may impose sanctions, including dismissal of an
 22 action. *Thompson v. Housing Auth., City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A
 23 court may dismiss an action based on a party’s failure to prosecute an action, obey a court order,
 24 or comply with local rules. *See, e.g., Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992)
 25 (dismissal for failure to comply with a court order to amend a complaint); *Malone v. U.S. Postal*
 26 *Service*, 833 F.2d 128, 130-31 (9th Cir. 1987) (dismissal for failure to comply with a court order);
 27

28 ² The undersigned further notes that as of the date of these Findings and Recommendations 42 days has
 passed. Thus, Plaintiff was afforded more than sufficient time to account for mailing (additional 21 days).

1 *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to prosecute and
2 to comply with local rules). In determining whether to dismiss an action, the Court must
3 consider several factors: (1) the public’s interest in expeditious resolution of litigation; (2) the
4 Court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public
5 policy favoring disposition of cases on their merits; and (5) the availability of less drastic
6 sanctions. *Henderson*, 779 F.2d at 1423; *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988).

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9 **B. Analysis**

10 The undersigned considers each of the above-stated factors and concludes dismissal is
11 warranted in this case. As to the first factor, the expeditious resolution of litigation is deemed to
12 be in the public interest, satisfying the first factor. *Yourish v. California Amplifier*, 191 F.3d 983,
13 990-91 (9th Cir. 1999). Turning to the second factor, the Court’s need to efficiently manage its
14 docket cannot be overstated. This Court has “one of the heaviest caseloads in the nation,” and
15 due to unfilled judicial vacancies, which was further exacerbated by the Covid-19 pandemic,
16 operates under a declared judicial emergency. *See* Amended Standing Order in Light of Ongoing
17 Judicial Emergency in the Eastern District of California. The Court’s time is better spent on its
18 other matters than needlessly consumed managing a case with a recalcitrant litigant. Because the
19 Court cannot effectively manage its docket if Plaintiff ceases litigating his case. Thus, the Court
20 finds that both the first and second factors weigh in favor of dismissal.

21 Delays inevitably have the inherent risk that evidence will become stale or witnesses’
22 memories will fade or be unavailable and can prejudice a defendant, thereby satisfying the third
23 factor. *See Sibron v. New York*, 392 U.S. 40, 57 (1968). Thus, the third factor, risk of prejudice
24 to defendant, also weighs in favor of dismissal since a presumption of injury arises from the
25 occurrence of unreasonable delay in prosecuting an action. *Anderson v. Air W.*, 542 F.2d 522, 524
26 (9th Cir. 1976). Plaintiff’s inaction amounts to an unreasonable delay in prosecuting this action,
27 weighing in favor of dismissal for a risk of prejudice to defendants.

28 Finally, the fourth factor usually weighs against dismissal because public policy favors

1 disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002). However,
2 “this factor lends little support to a party whose responsibility it is to move a case toward
3 disposition on the merits but whose conduct impedes progress in that direction,” which is the case
4 here. *In re Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217, 1228 (9th
5 Cir. 2006) (citation omitted). Indeed, “trial courts do not have time to waste on multiple failures
6 by aspiring litigants to follow the rules and requirements of our courts.” *Pagtalunan*, 291 F.3d at
7 644.

Finally, the Court’s warning to a party that failure to obey the court’s order will result in dismissal satisfies the “considerations of the alternatives” requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d at 1424. The Court’s February 7, 2023, Order expressly warned Plaintiff that his failure to comply with the Court’s order would result in a recommendation for dismissal of this action and count as a strike under the PLRA. (Doc. No. 13 at 9). Thus, Plaintiff had adequate warning that dismissal could result from his noncompliance. And the instant dismissal is a dismissal *without* prejudice, which is a lesser sanction than a dismissal with prejudice, thereby addressing the fifth factor.

16 After considering the factors set forth *supra* and binding case law, the undersigned
17 recommends dismissal, without prejudice, under Fed. R. Civ. P. 41 and Local Rule 110.

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20 || Accordingly, it is **RECOMMENDED**:

21 This action be DISMISSED without prejudice for Plaintiff's failure to obey court orders
22 and/or failure to prosecute.

NOTICE

24 These Findings and Recommendations will be submitted to the United States District
25 Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). **Within 14 days**
26 **of the date of service** of these Findings and Recommendations, Plaintiff may file written
27 objections with the Court. The document should be captioned, “Objections to Magistrate Judge’s
28 Findings and Recommendations.” Plaintiff’s failure to file objections within the specified time

1 may result in waiver of his rights on appeal. *Wilkerston v. Wheeler*, 772 F.3d 834, 839 (9th Cir.
2 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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4 Dated: April 10, 2023



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HELENA M. BARCH-KUCHTA
6 UNITED STATES MAGISTRATE JUDGE
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